

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CAL MAURICE BUTLER,
TDCJ No. 1427407,

Petitioner,

V.

DIRECTOR, TDCJ-CID,

Respondent.

§
§
§
§
§
§
§
§
§

No. 3:19-cv-538-N-BN

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Petitioner Cal Maurice Butler, a Texas prisoner, “waived a jury” and “pleaded guilty to two offenses of aggravated assault with a deadly weapon involving family violence” and “true to two enhancement paragraphs in each case,” and “[t]he trial court assessed punishment at forty years’ imprisonment in each case.” *Butler v. State*, Nos. 05-13-01434-CR & -01435-CR, 2014 WL 5338801, at *1 (Tex. App. – Dallas Oct. 20, 2014, pet. ref’d) (citing TEX. PENAL CODE ANN. § 22.02(a)); *see State v. Butler*, Nos. F06-65524-V & -65525-V (292d Jud. Dist. Ct., Dallas Cnty., Tex.).

The Texas Court of Criminal Appeals (the CCA) granted Butler leave to file an out-of-time appeal, *see Ex parte Butler*, Nos. WR-77,838-01 & -02, 2013 WL 2730782 (Tex. Crim. App. June 12, 2013), and an out-of-time petition for discretionary review (PDR), *see Ex parte Butler*, Nos. WR-77,838-03, 2017 WL 4401919 (Tex. Crim. App. Oct. 4, 2017). But his criminal judgments were affirmed as modified on appeal, after Butler’s counsel filed an *Anders* brief. *See Butler*, 2014 WL 5338801. And the CCA refused his PDR. *See Butler v. State*, PD-1175-17 (Tex. Crim. App. Dec. 20, 2017).

The CCA then denied his state habeas applications without written order. *See Ex parte Butler*, Nos. WR-77,838-04 & -05 (Tex. Crim. App. Jan. 30, 2019).

Butler now asserts through a timely *pro se* application for a writ of habeas corpus under 28 U.S.C. § 2254 that the state court unreasonable adjudicated (denied) his claims of ineffective assistance of trial counsel (IATC) based on counsel's failure to secure and use testimony from a mitigation specialist and counsel's determining that Butler was competent to plead guilty and Butler's claim that the trial court violated his right to due process by not investigating his competency. *See* Dkt. Nos. 3, 4, 5.

United States District Judge David C. Godbey referred Butler's petition to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference.

The State responded. *See* Dkt. Nos. 11 & 12. And Butler replied and moved for other relief. *See* Dkt. Nos. 15-20.

The undersigned enters these findings of fact, conclusions of law, and recommendation that the Court should deny federal habeas relief.

Legal Standards

"Federal habeas features an intricate procedural blend of statutory and caselaw authority." *Adekeye v. Davis*, 938 F.3d 678, 682 (5th Cir. 2019). In the district court, this process begins – and often ends – with the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), under which "state prisoners face strict procedural requirements and a high standard of review." *Adekeye*, 938 F.3d at 682

(citation omitted). This is because, “[u]nder AEDPA, state courts play the leading role in assessing challenges to state sentences based on federal law.” *Shinn v. Kayer*, 141 S. Ct. 517, 526 (2020) (per curiam).

So, where a state court has already rejected a claim on the merits, a federal court may grant habeas relief on that claim only if the state court adjudication

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

The statute therefore “restricts the power of federal courts to grant writs of habeas corpus based on claims that were ‘adjudicated on the merits’ by a state court,” *Shinn*, 141 S. Ct. at 520 (citation omitted). And, “[w]hen a state court has applied clearly established federal law to reasonably determined facts in the process of adjudicating a claim on the merits, a federal habeas court may not disturb the state court’s decision unless its error lies ‘beyond any possibility for fairminded disagreement.’” *Id.* (quoting *Harrington v. Richter*, 562 U.S. 86, 103 (2011)).

Further, “[u]nder § 2254(d),” the reasonableness of the state court decision – not whether it is correct – “is ‘the only question that matters.’” *Id.* at 526 (quoting *Richter*, 562 U.S. at 102); see also *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007) (“The question under AEDPA is not whether a federal court believes the state court’s determination was incorrect but whether that determination was unreasonable – a substantially higher threshold.”); *Sanchez v. Davis*, 936 F.3d 300, 305 (5th Cir. 2019)

("[T]his is habeas, not a direct appeal, so our focus is narrowed. We ask not whether the state court denial of relief was incorrect, but whether it was unreasonable – whether its decision was ‘so lacking in justification’ as to remove ‘any possibility for fairminded disagreement.’” (citation omitted)).

A state court adjudication on direct appeal is due the same deference under Section 2254(d) as an adjudication in a state post-conviction proceeding. *See, e.g., Dowthitt v. Johnson*, 230 F.3d 733, 756-57 (5th Cir. 2000) (a finding made by the CCA on direct appeal was an “issue ... adjudicated on the merits in state proceedings,” to be “examine[d] ... with the deference demanded by AEDPA” under “28 U.S.C. § 2254(d)”). And nothing “in AEDPA or [the Supreme] Court’s precedents permit[s] reduced deference to merits decisions of lower state courts.” *Shinn*, 141 S. Ct. at 524 n.2 (citing 28 U.S.C. § 2254).

Starting with Section 2254(d)(1), a state court decision is “contrary” to clearly established federal law if “it relies on legal rules that directly conflict with prior holdings of the Supreme Court or if it reaches a different conclusion than the Supreme Court on materially indistinguishable facts.” *Busby v. Dretke*, 359 F.3d 708, 713 (5th Cir. 2004); *see also Lopez v. Smith*, 574 U.S. 1, 2 (2014) (per curiam) (“We have emphasized, time and time again, that the [AEDPA] prohibits the federal courts of appeals from relying on their own precedent to conclude that a particular constitutional principle is ‘clearly established.’” (citation omitted)).

“A state court unreasonably applies clearly established Supreme Court precedent when it improperly identifies the governing legal principle, unreasonably

extends (or refuses to extend) a legal principle to a new context, or when it gets the principle right but ‘applies it unreasonably to the facts of a particular prisoner’s case.’” *Will v. Lumpkin*, 978 F.3d 933, 940 (5th Cir. 2020) (quoting *Williams v. Taylor*, 529 U.S. 362, 407-08 (2000); citation omitted). “But the Supreme Court has only clearly established precedent if it has ‘broken sufficient legal ground to establish an asked-for constitutional principle.’” *Id.* (quoting *Taylor*, 569 U.S. at 380-82; citations omitted).

As noted above, “[f]or purposes of § 2254(d)(1), an unreasonable application of federal law is different from an incorrect application of federal law.... A state court’s determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of the state court’s decision.” *Richter*, 562 U.S. at 101 (citations and internal quotation marks omitted). “Under § 2254(d), a habeas court must determine what arguments or theories supported or ... could have supported, the state court’s decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of [the Supreme] Court.” *Id.* at 102 (internal quotation marks omitted); *see also Evans v. Davis*, 875 F.3d 210, 216 (5th Cir. 2017) (recognizing that Section 2254(d) tasks courts “with considering not only the arguments and theories the state habeas court actually relied upon to reach its ultimate decision but also all the arguments and theories it could have relied upon” (citation omitted)).

The Supreme Court has further explained that “[e]valuating whether a rule

application was unreasonable requires considering the rule's specificity. The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations." *Richter*, 562 U.S. at 101 (internal quotation marks omitted). And "even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Id.* at 102. The Supreme Court has explained that, "[i]f this standard is difficult to meet, that is because it was meant to be," where, "[a]s amended by AEDPA, § 2254(d) stops short of imposing a complete bar on federal court relitigation of claims already rejected in state proceedings," but "[i]t preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with this Court's precedents," and "[i]t goes no further." *Id.* Thus, "[a]s a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id.* at 103; accord *Burt v. Titlow*, 571 U.S. 12, 20 (2013) ("If this standard is difficult to meet – and it is – that is because it was meant to be. We will not lightly conclude that a State's criminal justice system has experienced the extreme malfunction for which federal habeas relief is the remedy." (internal quotation marks, brackets, and citations omitted)).

As to Section 2254(d)(2)'s requirement that a petitioner show that the state court adjudication "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court

proceeding,” the Supreme Court has explained that “a state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance” and that federal habeas relief is precluded even where the state court’s factual determination is debatable. *Wood v. Allen*, 558 U.S. 290, 301, 303 (2010). Under this standard, “it is not enough to show that a state court’s decision was incorrect or erroneous. Rather, a petitioner must show that the decision was objectively unreasonable, a substantially higher threshold requiring the petitioner to show that a reasonable factfinder must conclude that the state court’s determination of the facts was unreasonable.” *Batchelor v. Cain*, 682 F.3d 400, 405 (5th Cir. 2012) (brackets and internal quotation marks omitted).

The Court must presume that a state court’s factual determinations are correct and can find those factual findings unreasonable only where the petitioner “rebut[s] the presumption of correctness by clear and convincing evidence.” 28 U.S.C. § 2254(e)(1); *Gardner v. Johnson*, 247 F.3d 551, 560 (5th Cir. 2001).

This presumption applies not only to explicit findings of fact but also “to those unarticulated findings which are necessary to the state court’s conclusions of mixed law and fact.” *Valdez v. Cockrell*, 274 F.3d 941, 948 n.11 (5th Cir. 2001); *see also Ford v. Davis*, 910 F.3d 232, 235 (5th Cir. 2018) (Section 2254(e)(1) “‘deference extends not only to express findings of fact, but to the implicit findings of the state court.’ As long as there is ‘some indication of the legal basis for the state court’s denial of relief,’ the district court may infer the state court’s factual findings even if they were not expressly made.” (footnotes omitted)).

And, even if the state court errs in its factual findings, mere error is not enough – the state court’s decision must be “*based* on an unreasonable factual determination.... In other words, even if the [state court] had gotten [the disputed] factual determination right, its conclusion wouldn’t have changed.” *Will*, 978 F.3d at 942. Further, “determining whether a state court’s decision resulted from an unreasonable legal or factual conclusion does not require that there be an opinion from the state court explaining the state court’s reasoning.” *Richter*, 562 U.S. at 98; *see also Pondexter v. Dretke*, 346 F.3d 142, 148 (5th Cir. 2003) (“a federal habeas court is authorized by Section 2254(d) to review only a state court’s ‘decision,’ and not the written opinion explaining that decision” (quoting *Neal v. Puckett*, 286 F.3d 230, 246 (5th Cir. 2002) (en banc) (per curiam))); *Evans*, 875 F.3d at 216 n.4 (even where “[t]he state habeas court’s analysis [is] far from thorough,” a federal court “may not review [that] decision de novo simply because [it finds the state court’s] written opinion ‘unsatisfactory’” (quoting *Neal*, 286 F.3d at 246)).

Section 2254 thus creates a “highly deferential standard for evaluating state court rulings, which demands that state-court decisions be given the benefit of the doubt.” *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002).

To overcome this standard, a petitioner must show that “there was no reasonable basis for the state court to deny relief.” *Richter*, 562 U.S. at 98.

That is, a petitioner must, in sum, “show, based on the state-court record alone, that any argument or theory the state habeas court could have relied on to deny [him] relief would have either been contrary to or an unreasonable application of clearly

established federal law as determined by the Supreme Court.” *Evans*, 875 F.3d at 217.

Analysis

- I. Butler has not established that his guilty pleas were not entered knowingly, voluntarily, and intelligently.

Underlying Butler’s claims is his contention that his guilty pleas were not valid. *Cf.* Dkt. No. 3 at 7 (requesting that he be given a “new plea hearing without the administration of psychiatric drugs”).

Federal courts will “uphold a guilty plea on habeas review when it is entered knowingly, voluntarily, and intelligently – that is, when the defendant understands the charge and its consequences.” *Trotter v. Vannoy*, 695 F. App’x 738, 741 (5th Cir. 2017) (per curiam) (footnote omitted)); *see also United States v. Lord*, 915 F.3d 1009, 1016 (5th Cir. 2019) (“To enter a knowing and voluntary guilty plea, a defendant must have full knowledge of what the plea connoted and of its consequences.” (citing *Boykin v. Alabama*, 395 U.S. 238, 244 (1969))).

A defendant must therefore “understand the nature of the constitutional protection that he is waving”; not possess “an incomplete understanding of the charges against him [such] that his plea cannot stand as an admission of guilt”; and, as to his sentence, know “the maximum prison term and fine for the offense charged.” *Trotter*, 695 F. App’x at 742 (footnotes omitted); *see also James v. Cain*, 56 F.3d 662, 666 (5th Cir. 1995) (“The critical issue in determining whether a plea was voluntary and intelligent is ‘whether the defendant understood the nature and substance of the charges against him, and not necessarily whether he understood their technical legal

effect.’ [And, i]f the record shows the defendant ‘understood the charge and its consequences,’ [a federal habeas court] will uphold a guilty plea as voluntary even if the trial judge failed to explain the offense.” (citations omitted)).

The United States Court of Appeals for the Fifth Circuit has identified three core concerns in a guilty plea proceeding: (1) the absence of coercion; (2) the defendant’s full understanding of the charges; and (3) the defendant’s realistic appreciation of the consequences of the plea. *See United States v. Gracia*, 983 F.2d 625, 627-28 (5th Cir. 1993).

These core concerns are addressed by the admonishments contained in article 26.13 of the Texas Code of Criminal Procedure. *See, e.g., Ojena v. Thaler*, No. 3:10-cv-2601-P-BD, 2011 WL 4048514, at *1 & n.1 (N.D. Tex. Aug. 25, 2011), *rec. adopted*, 2011 WL 4056162 (N.D. Tex. Sept. 12, 2011). But “whether the state trial court followed the statute is nondispositive,” as the Court’s focus remains on whether the plea was “entered into knowingly, voluntarily and intelligently.” *Dominguez v. Director, TDCJ-CID*, No. 6:14cv49, 2014 WL 2880492, at *3 (E.D. Tex. June 23, 2014) (citing *Montoya v. Johnson*, 226 F.3d 399, 405 (5th Cir. 2000); *James*, 56 F.3d at 666).

Butler has not shown – and the record does not support – that he did not enter his guilty pleas knowingly, voluntarily, and intelligently. As the hearing transcript reflects, he understood the charges, *see* Dkt. No. 12-3 at 16, and the consequences of pleading true to the enhancements based on his prior convictions, *see id.* at 16-18. And Butler signed a Judicial Confession, admitting the truth of all offense elements and enhancement paragraphs, *see id.* at 53, which itself “provides sufficient evidence

to support the judgment[s],” *Bryson v. State*, No. 03-03-00094-CR, 2004 WL 34854, at *2 (Tex. App. – Austin Jan. 8, 2004, no pet.) (citations omitted).

And, because Butler has not established that his guilty pleas were invalid, he has waived all non-jurisdictional defects in the proceeding leading up to those pleas. *See United States v. Bendicks*, 449 F.2d 313, 315 (5th Cir. 1971) (“We have held on numerous occasions that a valid guilty plea constitutes a waiver of all non-jurisdictional defects in the prior proceedings.” (collecting cases)); *Scott v. Wainwright*, 698 F.2d 427, 429 (11th Cir. 1983) (“Once a plea of guilty has been entered, nonjurisdictional challenges to the conviction’s constitutionality are waived, and only an attack on the voluntary and knowing nature of the plea can be sustained.” (citing *McMann v. Richardson*, 397 U.S. 759 (1970); *Bradbury v. Wainwright*, 658 F.2d 1083, 1087 (5th Cir. Oct. 1981))).

Butler’s claim that his counsel’s assistance was constitutionally ineffective based on the decision not to use a mitigation specialist seems to be a non-jurisdictional defect insofar as alleging that “trial counsel should have taken further steps to investigate [a defendant’s] case and develop a trial strategy” does “not implicate the voluntariness of his plea” and is thus “barred from habeas review” here. *Petersimes v. Stephens*, No. 3:14-cv-3220-N, 2016 WL 1445226, at *7 (N.D. Tex. Mar. 28, 2016) (citing *Smith v. Estelle*, 711 F.2d 677, 682 (5th Cir. 1983); citations omitted), *rec. accepted*, 2016 WL 3551725 (N.D. Tex. June 30, 2016), *C.O.A. denied*, 2017 WL 5054176 (5th Cir. July 28, 2017).

But this allegation is also meritless for the reasons explained below.

II. Butler's IATC claims should be denied.

The Court reviews the merits of properly exhausted IATC claims under the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984), under which a petitioner “must show that counsel’s performance” – “strongly presume[d to be] good enough” – “was [1] objectively unreasonable and [2] prejudiced him.” *Coleman v. Vannoy*, 963 F.3d 429, 432 (5th Cir. 2020) (quoting *Howard v. Davis*, 959 F.3d 168, 171 (5th Cir. 2020)).

To count as objectively unreasonable, counsel’s error must be “so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland*, 466 U.S. at 687; *see also Buck v. Davis*, 137 S. Ct. 759, 775 (2017) (reaffirming that “[i]t is only when the lawyer’s errors were ‘so serious that counsel was not functioning as the “counsel” guaranteed ... by the Sixth Amendment’ that *Strickland*’s first prong is satisfied” (citation omitted)). “And to establish prejudice, a defendant must show ‘that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Andrus v. Texas*, 140 S. Ct. 1875, 1881 (2020) (per curiam) (quoting *Strickland*, 466 U.S. at 694).

“A conscious and informed decision on trial tactics and strategy cannot be the basis for constitutionally ineffective assistance of counsel unless it is so ill chosen that it permeates the entire trial with obvious unfairness.” *Cotton v. Cockrell*, 343 F.3d 746, 752-53 (5th Cir. 2003); *see also Feldman v. Thaler*, 695 F.3d 372, 378 (5th Cir. 2012) (“[B]ecause of the risk that hindsight bias will cloud a court’s review of counsel’s

trial strategy, ‘a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.’” (quoting *Strickland*, 466 U.S. at 689)).

And, “[j]ust as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Richter*, 562 U.S. at 110. “The Supreme Court has admonished courts reviewing a state court’s denial of habeas relief under AEDPA that they are required not simply to give [the] attorney’s the benefit of the doubt, ... but to affirmatively entertain the range of possible reasons [petitioner’s] counsel may have had for proceeding as they did.” *Clark v. Thaler*, 673 F.3d 410, 421 (5th Cir. 2012) (internal quotation marks omitted).

Therefore, on habeas review under AEDPA, “if there is any ‘reasonable argument that counsel satisfied *Strickland*’s deferential standard,’ the state court’s denial must be upheld.” *Rhoades v. Davis*, 852 F.3d 422, 432 (5th Cir. 2017) (quoting *Richter*, 562 U.S. at 105); *see also Sanchez*, 936 F.3d at 305 (“As the State rightly puts it, we defer ‘both to trial counsel’s reasoned performance and then again to the state habeas court’s assessment of that performance.’” (quoting *Rhoades*, 852 F.3d at 434)).

To demonstrate prejudice, a habeas petitioner “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability

sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. Thus, “the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently.” *Richter*, 562 U.S. at 111. “Instead, *Strickland* asks whether it is ‘reasonably likely’ the result would have been different,” which “does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.” *Id.* at 111-12 (quoting *Strickland*, 466 U.S. at 693, 696, 697). “The likelihood of a different result must be substantial, not just conceivable.” *Richter*, 562 U.S. at 112.

IATC claims are considered mixed questions of law and fact and are therefore analyzed under the “unreasonable application” standard of 28 U.S.C. § 2254(d)(1). *See Gregory v. Thaler*, 601 F.3d 347, 351 (5th Cir. 2010); *Adekeye*, 938 F.3d at 682.

Where the state court has adjudicated claims of ineffective assistance on the merits, this Court must review a habeas petitioner’s claims under the “doubly deferential” standards of both *Strickland* and Section 2254(d). *Cullen v. Pinholster*, 563 U.S. 170, 190, 202 (2011); *compare Rhoades*, 852 F.3d at 434 (“Our federal habeas review of a state court’s denial of an ineffective-assistance-of-counsel claim is ‘doubly deferential’ because we take a highly deferential look at counsel’s performance through the deferential lens of § 2254(d).” (citation omitted)), *with Johnson v. Sec’y, DOC*, 643 F.3d 907, 910-11 (11th Cir. 2011) (“Double deference is doubly difficult for a petitioner to overcome, and it will be a rare case in which an ineffective assistance

of counsel claim that was denied on the merits in state court is found to merit relief in a federal habeas proceeding.”); *see also Canfield v. Lumpkin*, ___ F.3d ___, No. 18-10431, 2021 WL 2024940, at *3 (5th Cir. May 21, 2021) (“*Strickland* ... imposes a high bar on those alleging ineffective assistance of counsel. But 28 U.S.C. § 2254(d) ... raises the bar even higher.”); *cf. Shinn*, 141 S. Ct. at 525 (“recogniz[ing] the special importance of the AEDPA framework in cases involving *Strickland* claims,” since “[i]neffective-assistance claims can function ‘as a way to escape rules of waiver and forfeiture,’ and they can drag federal courts into resolving questions of state law” (quoting *Richter*, 562 U.S. at 105)).

In such cases, the “pivotal question” for this Court is not “whether defense counsel’s performance fell below *Strickland*’s standard”; it is “whether the state court’s application of the *Strickland* standard was unreasonable.” *Richter*, 562 U.S. at 101; *see also id.* at 105 (“Establishing that a state court’s application of *Strickland* was unreasonable under § 2254(d) is all the more difficult. The standards created by *Strickland* and § 2254(d) are both ‘highly deferential,’ and when the two apply in tandem, review is ‘doubly’ so.” (internal quotation marks and citations omitted)). “And, because the *Strickland* standard is a general standard, a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard.” *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009) (citation omitted).

In sum, AEDPA does not permit a *de novo* review of state counsel’s conduct in these claims under *Strickland*. *See Richter*, 562 U.S. at 101-02. Instead, on federal habeas review of a *Strickland* claim fully adjudicated in state court, the state court’s

determination is granted “a deference and latitude that are not in operation when the case involves review under the *Strickland* standard itself.” *Id.* at 101; *see Canfield*, 2021 WL 2024940, at *3 (Federal courts “review state-court adjudications for errors ‘so obviously wrong’ as to lie ‘beyond any possibility for fairminded disagreement,’” presuming the state court “findings of fact to be correct.” (footnotes omitted)).¹

Butler grounds one IATC claim on his trial counsel’s alleged failure to determine that Butler was competent to plead guilty because she knew Butler was on medication. While, at his plea proceeding, Butler testified that, after committing the crimes, he had felt “[d]epressed, sad” – which he described as feelings new to him – for which the jail had provided him “Prozac and Trysinol,” Dkt. No. 12-3 at 40, his testimony was otherwise coherent and does not support Butler’s assertion that

¹ *See also Woods v. Etherton*, 136 S. Ct. 1149, 1151 (2016) (per curiam) (explaining that federal habeas review of ineffective-assistance-of-counsel claims is “doubly deferential” “because counsel is ‘strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment’”; therefore, “federal courts are to afford ‘both the state court and the defense attorney the benefit of the doubt’” (quoting *Burt*, 571 U.S. at 22, 15)); *Adekeye*, 938 F.3d at 683-84 (“The Supreme Court standard on prejudice is sharply defined: ‘It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding.’ [A petitioner] must show it was ‘reasonably likely’ the jury would have reached a different result, not merely that it could have reached a different result. The Court reaffirmed this point in *Richter*: ‘The likelihood of a different result must be substantial, not just conceivable.’ Now layer on top of that the habeas lens of reasonableness. [Where] the state court ha already adjudicated [a petitioner’s] ineffective-assistance claim on the merits, he must show that the court’s no-prejudice decision is ‘not only incorrect but “objectively unreasonable.”’ Put differently, [he] must show that every reasonable jurist would conclude that it is reasonable likely that [a petitioner] would have fared better at trial had his counsel conducted [himself differently]. ‘It bears repeating,’ the Supreme Court emphasized in *Richter*, ‘that even a strong case for relief does not mean the state court’s contrary conclusion was unreasonable.’” (footnotes omitted)).

counsel should have inquired as to his competence to plead guilty, *see id.* at 34-49. He has therefore not shown that the state court unreasonably adjudicated this claim.

Butler similarly fails to establish that his other IATC claim was unreasonably denied. As to the mitigation specialist claim, his counsel obtained funds to hire a mitigation specialist. *See* Dkt. No. 12-1 at 9-18. But the record does not reflect why such a specialist was not utilized.

Regardless,

“[c]omplaints of uncalled witnesses are not favored in federal habeas corpus review because the presentation of testimonial evidence is a matter of trial strategy and because allegations of what a witness would have stated are largely speculative.” “To prevail ... the petitioner must name the witness, demonstrate that the witness was available to testify and would have done so, set out the content of the witness’s proposed testimony, and show that the testimony would have been favorable to a particular defense.”

Nelson v. Davis, 952 F.3d 651, 669 (5th Cir. 2020) (quoting *Day v. Quarterman*, 566 F.3d 527, 538 (5th Cir. 2009)).

Butler has not provided evidence showing what the uncalled mitigation specialist would have presented to assist him to provide a more lenient sentence. Thus, he cannot prevail on this claim.

III. Butler’s claim of trial court error should be denied.

Butler finally asserts that the trial court should have investigated his competence once it had before it testimony that Butler had been medicated.

A criminal defendant has a procedural due process right to a competency hearing whenever the facts before the trial court raise or should raise a bona fide doubt concerning competence. If the trial judge received information which, objectively considered, should reasonably have raised a doubt about the defendant’s competence and alerted the trial judge to the possibility the defendant could neither understand the

proceedings, nor rationally aid his attorney in his defense, the trial judge was obligated to make further inquiry into the defendant's competence to stand trial. In determining whether a competency hearing is required, the trial judge must give consideration to (1) the existence of a history of irrational behavior, (2) the defendant's bearing and demeanor at the time of trial, and (3) prior medical opinions. However, a competency determination is only necessary when the trial court has reason to doubt the defendant's competence. A habeas petitioner asserting a claim the trial court erred in failing to hold a competency hearing bears the burden of making a clear and convincing showing of the existence of a real, substantial, and legitimate doubt as to his mental capacity.

Adanandus v. Johnson, 947 F. Supp. 1021, 1088 (W.D. Tex. 1996) (footnotes omitted).

Butler has not carried his burden. Neither his testimony at his plea proceeding nor any other evidence (that he points to or otherwise in the record) supports a conclusion that the trial court erred by not holding a competency hearing. This claim should therefore be denied.

Recommendation

The Court should deny the application for a writ of habeas corpus.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the

factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: May 27, 2021



DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE